

**GUIDELINES FOR DETERMINING THE LENGTH OF STAY
OF JUVENILES INDETERMINATELY COMMITTED TO
THE DEPARTMENT OF JUVENILE JUSTICE**

ADOPTED BY THE BOARD OF JUVENILE JUSTICE

Pursuant to §§16.1-285 and 66-10 of the Code of Virginia

Revised July 1, 2008

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I. PURPOSE

These Guidelines for Determining the Length of Stay of Juveniles Indeterminately Committed to the Department of Juvenile Justice (“Length of Stay Guidelines” or the “Guidelines”) provide direction for determining the lengths of stay of residents indeterminately committed to the department.

Additionally, these Guidelines are intended to link length of stay to offense behavior; to hold residents accountable for their behavior; to provide consistency across institutions and residents; to allow reasonable flexibility in accommodating significant individual case differences; and to address residents’ treatment needs as appropriate.

II. SCOPE

These Guidelines apply to all persons who are committed to the department for an indeterminate period of time pursuant to subsection 14 of §16.1-278.8 or under §16.1-272 of the Code of Virginia.

The Guidelines do not apply to persons determinately committed to the department as a serious offender under §16.1-285.1 or §16.1-272 of the Code of Virginia, except when serving a consecutive or concurrent determinate commitment as detailed herein.

These Guidelines shall neither restrict nor limit the authority of the director of the department or his designee to release residents under §§16.1-285 and 66-3 of the Code of Virginia or other applicable statutes and regulations.

III. DEFINITIONS

“*Date of Commitment*” means the hearing date on which the court made the determination that a final order, committing the juvenile to the department, be issued.

“*Department*” means the Department of Juvenile Justice.

“*Direct care*” means the time during which a resident, who is committed to the department pursuant to §16.1-272 or subsections A 14 or 17 of §16.1-278.8 of the Code of Virginia, is under the supervision of staff in a juvenile residential facility operated or contracted for by the department.

“*Early release date*” means the date that completes a resident’s minimum length of stay as calculated in these Guidelines. On or after this date, a resident who meets the criteria set out in these Guidelines may be eligible for release.

“*Early release incentive*” means a program the director of the department may implement as a behavior management tool enabling eligible residents to earn release from direct care prior to the projected early release date as established by these Guidelines.

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“*Guidelines*” means the Length of Stay Guidelines for Indeterminately Committed Juveniles.

“*Juvenile residential facility*” means a publicly or privately operated facility, a secured custody facility defined in §16.1-228 of the Code of Virginia, or an alternative placement for residents where 24-hour-per-day care is provided to persons under the direct care of the department.

“*Late release date*” means the date after which a resident should not be kept in direct care except as provided in these Guidelines or other applicable statutes.

“*Length of stay*” (LOS) means the projected length of time, as calculated by these Guidelines, a resident will spend in the department’s direct care after receiving an indeterminate commitment to the department.

“*Mandatory Treatment*” means the clinical services or rehabilitative programs provided to a resident to address behavior directly associated with a committing offense or a major institutional offense.

“*Misdemeanant*” means an individual who is committed to the department for a Class 1 misdemeanor offense with no convictions or adjudications of delinquency on a felony offense (classified as a 1-1 on Table II of these Guidelines).

“*Recommended Treatment*” means the clinical services or rehabilitative programs intended to enhance a resident’s ability to function successfully in the community, which does not meet the criteria for a Mandatory Treatment designation.

“*Resident*” means an individual, both a juvenile and an adult, who is committed to the department and is residing in a juvenile residential facility. For the purposes of these Guidelines, a resident is restricted to individuals committed to the department pursuant to §16.1-272 or subsections A 14 or 17 of §16.1-278.8 of the Code of Virginia.

“*Statutory release date*” means the date upon which the department’s legal authority to confine the resident expires. For most indeterminately committed residents, with the exception of residents committed for murder or manslaughter, this means the day before their 21st birthday or the date that occurs 36 continuous months from the latest Date of Commitment, whichever occurs first. Residents indeterminately committed for murder or manslaughter shall not be held in direct care after the day before their 21st birthday.

IV. DEFINITION OF OFFENSES

“Class 1 Misdemeanor Offense” means a conviction or an adjudication of delinquency for an offense that is classified as a Class 1 misdemeanor in §§18.2-8, 18.2-11, and 18.2-12 of the Code of Virginia if committed by an adult.

“Current Committing Offense(s)” means those delinquent or criminal offenses listed on the Commitment Order issued by the judge in the committing court. If a resident has been committed after violating the rules of probation, the committing offenses shall include those underlying offenses specified in the Commitment Order.

“Felony Offense” means a conviction or an adjudication of delinquency for an offense that is classified as a felony in §18.2-8 or §18.2-9 of the Code of Virginia if committed by an adult.

“Major Institutional Offense” means an act, in violation of established department rules, as established by approved department procedures, for which a resident is found guilty through the department’s due process procedures.

“Moderate Institutional Offense” means an act in violation of established department rules, as established by approved department procedures, which does not meet the criteria for a major institutional offense, for which a resident is found guilty through the department’s due process procedures.

“Pending Offense” means those delinquent or criminal offenses for which the resident was alleged to have committed before the Date of Commitment on which there was not a final adjudication of delinquency or conviction of guilt before the Date of Commitment.

“Prior Offense” means all offenses for which there was a final conviction or adjudication of delinquency before the Date of Commitment that were not Current Committing Offenses, except those charges that resulted in a concurrent determinate commitment or an active period of incarceration to be served after release from the current commitment.

“Serious Institutional Offense” means an offense for which the resident was found guilty, through the department’s due process procedures, that meets the criteria for an escape, an attempted escape, an assault on staff, or gang activity as detailed in approved department procedures or for an offense listed in §§53.1-203, 18.2-55, 18.2-49, and 18.2-48.1 of the Code of Virginia.

“Subsequent Offense” means those delinquent or criminal offenses that the resident commits after the Date of Commitment.

V. CALCULATING THE INITIAL LENGTH of STAY

Introduction: The Initial Length of Stay (LOS) Calculation

Two tables are used in determining a resident's length of stay.

- Table I assigns the level of severity for (a) the most serious current committing offense and (b) the most serious prior offense. The resulting two numbers are combined in a pattern (a)-(b) for further calculation.
- Table II accounts for chronic offense behavior that may increase the resident's initial length of stay calculation.

Determining a resident's initial length of stay at the time he enters direct care is a three-step process. These steps are:

- 1) Determining the most serious committing offense. The most serious committing offense is assigned a severity level from 1 through 4 as indicated on Table I.
- 2) Determining the most serious prior offense. The most serious prior offense is assigned a severity level from 1 through 4 as indicated on Table I.
- 3) Adjustment for chronic offense behavior as indicated on Table II.

TABLE I. SEVERITY LEVEL FOR CURRENT AND PRIOR OFFENSES

LEVEL	TYPE OF OFFENSE	EXAMPLES
Level 1 ¹	Class 1 Misdemeanors	Simple Assault; Petit Larceny
Level 2	Class 4, 5, and 6 Felonies; Unclassified felonies carrying a maximum sentence of 10 years	Unauthorized Use of an Auto; Possession of a Schedule I or II Substance; Voluntary and Involuntary Manslaughter
Level 3	Class 3 Felonies; Unclassified felonies carrying a maximum sentence of 20 years; Unclassified non-person felonies carrying a maximum sentence of more than 20 years	Burglary of Dwelling with Intent; Grand Larceny; Aggravated Involuntary Manslaughter
Level 4	Class 1 and 2 Felonies; Unclassified felony offenses against persons carrying a maximum sentence of more than 20 years	Armed Robbery; Rape; Murder

¹Residents who have no past convictions are assigned a Level 1 for the most serious prior offense.

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TABLE II. INITIAL LOS STEPS & ADJUSTMENTS TO DETERMINE LOS RANGE

Offense Severity determines the initial LOS Step. The initial steps are followed by adjustments for chronic offense behavior.	RELEASE DATES Early - Late
1-1	3 months - 6 months
1-2, 1-3, 2-1, 2-2 1-1, increased 3 months for chronicity	6 months - 12 months
1-1, increased 6 months for chronicity 1-2, 1-3, 2-1, 2-2, increased 3 months for chronicity	9 months - 15 months
1-4, 2-3, 2-4, 3-1, 3-2, 3-3 1-2, 1-3, 2-1, 2-2, increased 6 months for chronicity	12 months - 18 months
1-4, 2-3, 2-4, 3-1, 3-2, 3-3, increased 3 months for chronicity	15 months - 21 months
1-4, 2-3, 2-4, 3-1, 3-2, 3-3, increased 6 months for chronicity	18 months - 24 months
3-4, 4-1, 4-2, 4-3, 4-4	18 months - 36 months
3-4, 4-1, 4-2, 4-3, 4-4, increased 3 months for chronicity	21 months - 36 months
3-4, 4-1, 4-2, 4-3, 4-4, increased 6 months for chronicity	24 months - 36 months

1.00 STEP 1: Table I - Determining the Most Serious Committing Offense

The first step is to identify the severity level that represents the resident's most serious committing offense by using Table I. Table I is divided into four levels of severity modeled upon the penalty structure established by the General Assembly for criminal offenses. Level 1 is the least severe, and Level 4 is the most severe.

1.10 Only Current Committing Offenses will be Used

Only those Current Committing Offenses will be considered when determining the most serious committing offense. The prior offenses will be used later in the LOS calculation.

1.11 Commitment on a Class 1 Misdemeanor Offense

When a resident is committed on a fourth Class 1 misdemeanor offense or a Class 1 misdemeanor after a conviction or delinquent adjudication on a felony offense, only the misdemeanor offense and other offenses listed on the Commitment Order will be considered Current Committing Offenses.

1.12 Commitment Due to Violation of Probation or Court Order

If a resident has been committed after violating the terms or conditions of his probation or for a violation of a court order, then the most serious underlying offense

listed on the Commitment Order will be used to determine the most serious committing offense in Table I.

When a resident is committed for a violation of probation along with another Class 1 misdemeanor or felony offense, the underlying offenses listed on the Commitment Order shall be considered Current Committing Offenses.

1.13 Commitment Due to a Violation of Parole

If a resident is recommitted on a violation of parole, without an adjudication of a new criminal offense that resulted in commitment to the department, the violation for parole will be counted as the sole committing offense and will be classified as severity Level 1 in Tables I and II.

1.14 Offenses Nolle Processed, Dismissed, or Diverted are Not Used

Offenses that are nolle prossed, taken under advisement without a final adjudication, informally diverted, or dismissed at intake or by the court are not counted in calculating the length of stay. The offenses utilized in the Guidelines must be offenses on which the resident was actually convicted or adjudicated delinquent.

1.20 Using the Most Serious Committing Offense in Table II

The severity level assigned to the most serious committing offense is determined using Table I. This will be plugged in as the first number, of the two number set, used for calculating the resident's length of stay in Table II.

2.00 STEP 2: Determining the Most Serious Prior Offense

The second step involves establishing the most serious prior offense by using Table I. Similar to establishing the most serious committing offense in section 1.00, the most serious prior offense is established by using Table I to compare the level of severity for each prior offense.

2.10 Use Only Prior Convictions or Adjudications Not Included on the Commitment Order

For the purpose of these Guidelines, prior offenses include only those offenses on which there was a conviction or an adjudication of delinquency and which were not the bases or foundation for the commitment (not Current Committing Offenses) and which did not result in a concurrent or consecutive, if ordered by the court, determinate commitment or an active period of incarceration to be served after release from the current commitment.

2.20 Using the Most Serious Prior Offense in Table II

The prior offense with the highest level of severity will be designated as the most serious prior offense for calculating the resident's length of stay in Table II. The severity level from Table I will be plugged in as the second number, of the two number set, used for calculating the resident's length of stay in Table II.

2.21 No Prior Convictions Rank Level 1

A juvenile with no past convictions will be automatically assigned to Level 1 for the most serious prior offense.

3.00 STEP 3: Adjustment for Chronic Offense Behavior

The third step is to determine the chronicity of the resident's offending behavior by considering all but the two offenses used as the most serious committing offense and most serious prior offense. A resident's length of stay will be increased, as detailed on Table II, when the resident's offense history is such that an adjustment is indicated in this section.

3.01 Not Applicable to a Resident Committed on a Violation of Parole

The length of stay for a resident recommitted on a violation of parole, without any corresponding criminal charges that resulted in the commitment, shall not be increased for chronic offense behavior.

3.10 Points for Class 1 Misdemeanors and Felonies

The resident's entire delinquent and criminal histories, except the two offenses used as the most serious committing offense and the most serious prior offense, are examined; and each delinquent and criminal offense will be given points as follows:

- one point for each Class 1 misdemeanor; and
- two points for each felony.

3.20 Adjustment of Length of Stay Based Upon Total Score

The points given to each prior delinquent and criminal act are added together into one score. The length of stay for a resident will be adjusted based on the total score, as follows:

- a score of 7 or less does not affect length of stay;
- a score of 8 to 11 increases length of stay by three months; and
- a score of 12 or more increases length of stay by six months.

VI. RECALCULATIONS: MULTIPLE OFFENSES, MULTIPLE COMMITMENTS, AND PENDING OFFENSES

This section addresses the calculation and recalculation of a resident's current length of stay when the resident is subject to multiple Commitment Orders for offenses committed before the Date of Commitment that resulted in the resident's current time in direct care. Subsequent offenses, those occurring after this Date of Commitment, are addressed in Chapter VII of these Guidelines.

1.00 Multiple Offenses in One Commitment Order is a Single Commitment

A resident committed to the department on multiple charges disposed of in one hearing and contained in one Commitment Order is treated as having a single commitment. The length of stay for that one indeterminate commitment will be calculated in accordance with sections 1.00 through 3.00 of Chapter V of these Guidelines.

2.00 Multiple Commitments

A resident has multiple commitments when the resident is committed to the department in more than one hearing with more than one Commitment Order. All such offenses must have been committed prior to the Date of Commitment that resulted in the resident's current time in direct care. As a general rule, a resident receiving multiple commitments will serve those commitments concurrently.

2.10 Multiple Indeterminate Commitments

If the juvenile arrives at the Reception & Diagnostic Center with multiple current indeterminate Commitment Orders, the length of stay will be calculated in accordance with sections 1.00 through 3.00 of Chapter V of these Guidelines with all of the committing offenses constituting Current Committing Offenses.

2.20 Conviction or Adjudication of Guilt for Pending Offenses Not Resulting in Commitment

When a resident is found guilty or adjudicated delinquent on a pending offense and the disposition does *not* result in a new commitment, the resident's length of stay for the current indeterminate commitment will be recalculated by treating the new adjudication(s) or conviction(s) as a *prior offense(s)* upon which the current length of stay was calculated.

The resident's current length of stay will be recalculated with the new convictions or adjudications in accordance with sections 1.00 through 3.00 of Chapter V. The determination of projected release dates will run from the Date of Commitment governing the resident's current commitment.

2.21 Exception: Conviction or Adjudication of Guilt for Pending Offense with a Sentence of Active Incarceration

If the disposition or sentence on a pending offense results in a period of active incarceration in a secure facility, such as a detention home or jail, the length of stay will not be recalculated for these offenses.

If the new period of incarceration is served during the resident's current length of stay, the current length of stay will be suspended during this period. This period shall not be credited toward the resident's completion of his length of stay.

2.30 Conviction or Adjudication of Guilt on Pending Offense Resulting in an Indeterminate Commitment

A pending offense, on which the disposition or sentence *does* result in a new indeterminate commitment, constitutes a multiple commitment. The resident's length of stay will be recalculated by adding these offenses to the resident's Current Committing Offenses.

2.40 Indeterminate Commitment Combined with a Determinate Commitment

Residents who receive both an indeterminate commitment and a determinate commitment will serve the commitments concurrently or consecutively, if ordered by the court, and will remain in direct care until expiration of the determinate commitment ordered by the court or completion of the length of stay calculated pursuant to these Guidelines, whichever occurs the latest. The offenses resulting in the determinate commitment will not be used in the calculation of the resident's length of stay for the indeterminate commitment.

3.00 Statutory Maximum Length of Stay

A resident shall not remain in direct care longer than 36 continuous months from the date of the latest indeterminate commitment, unless the release date for a determinate commitment occurs later in time or except as otherwise statutorily provided.

VII. SUBSEQUENT OFFENSES

A subsequent offense will result in the recalculation of the resident's length of stay as described below.

1.00 Adjudication of Guilt or Conviction without Commitment

If the disposition on a subsequent offense does *not* result in a new commitment or an active sentence of incarceration, the resident's current length of stay will be recalculated by adding the new adjudication or conviction to the *prior offense(s)* upon which the current length of stay was calculated. The determination of projected release dates will run from the initial Date of Commitment.

2.00 Adjudication of Guilt or Conviction without Commitment but with a Sentence of Active Incarceration

If the disposition on a subsequent offense does not result in a new commitment but *does* result in the defendant having to serve active time of incarceration in a jail, detention home, or other secure facility, the resident's length of stay will not be recalculated for these offenses.

If the new period of incarceration is served during the resident's current length of stay, the current length of stay will be suspended during this period. This period shall not be credited toward the resident's completion of his length of stay.

3.00 Adjudication of Guilt or Conviction Resulting in a New Commitment to the Department

If the disposition or sentencing on a subsequent offense results in a new indeterminate commitment to the department, a new length of stay will be calculated.

3.10 Current Indeterminate followed by a New Indeterminate Commitment

When a resident, currently in direct care on an indeterminate commitment, receives a new indeterminate commitment on a subsequent offense, the length of stay for the new commitment shall be calculated with only the *new* committing offenses being considered Current Committing Offenses in this calculation. All other offenses shall be treated as prior offenses.

The newly calculated length of stay shall be added to the early and late release dates governing the resident's current commitment for a determination of new projected release dates. The determination of projected release dates will run from the initial date of commitment. The time served shall not exceed 36 months from the date of the latest subsequent commitment except as statutorily provided.

3.20 Current Determinate followed by a Subsequent Indeterminate Commitment

When a resident, in direct care on a determinate commitment, receives a new indeterminate commitment on a subsequent offense, the indeterminate commitment(s) will be calculated in accordance with sections 1.00 to 3.00 of Chapter V of these Guidelines and will be served concurrently with the determinate commitment.

If the length of stay for the indeterminate commitment exceeds the release date for the determinate commitment, the resident shall remain in direct care until eligible for release on the indeterminate commitment under these Guidelines. The time served for the indeterminate commitment shall not exceed 36 continuous months from the date of the indeterminate commitment except as statutorily provided.

3.30 Current Indeterminate followed by a Subsequent Determinate Commitment

When a resident, in direct care on an indeterminate commitment, receives a new determinate commitment on a subsequent offense, the resident's length of stay will not be recalculated. The resident must complete the determinate commitment in accordance with the Commitment Order.

If the determinate commitment is completed prior to the resident's eligibility for release on the indeterminate commitment as provided in these Guidelines, the resident shall complete the remaining time on the indeterminate commitment prior to release from direct care. The time served for the indeterminate commitment shall not exceed 36 continuous months from the date of the indeterminate commitment unless otherwise statutorily provided.

VIII. OTHER FACTORS AFFECTING LENGTH OF STAY

1.00 Mandatory Treatment may affect Length of Stay

A resident shall not be released prior to the statutory release date or expiration of determinate sentence unless the assigned Mandatory Treatment is completed, unless statutorily required or otherwise provided for in these Guidelines.

1.10 Mandatory Treatment must Relate to Criminal or Institutional History

A designated Mandatory Treatment need must be specifically related to the resident's Current Committing Offenses or a Major Institutional Offense.

1.20 Completing Mandatory Treatment Program

After the projected early release date, a resident may be considered for release when all Mandatory Treatment is completed.

1.30 Failure to Complete Mandatory Treatment Program – Not Resident's Fault

When it becomes apparent that a resident, through no fault of his own, is not actively involved in a treatment program required by a Mandatory Treatment need and the resident's failure to complete the Mandatory Treatment program may result in the resident's remaining in direct care past his late release date, his case shall be reviewed as provided in approved department procedures. This case review shall consider the welfare of the resident, the resident's amenability to treatment, the availability of treatment in the community, the interests of the public and whether the resident is considered a manageable risk if released to the community and shall determine whether the resident should be released to the community on parole supervision.

If the resident is released from direct care before his statutory release date, without completing a juvenile residential facility's program addressing the Mandatory Treatment need, full participation and the completion of any community treatment program identified to address the Mandatory Treatment need shall be a condition of parole supervision subject to the provisions of §16.1- 291 of the Code of Virginia.

1.40 Residents Committed on a Class 1 Misdemeanor

A Misdemeanant shall not be held past 12 months due to non-completion of a Mandatory Treatment need without a review of his case as provided for in approved department procedures.

2.00 Recommended Treatment

A resident shall not be released prior to the projected late release date until all Recommended Treatment is completed, unless statutorily required or otherwise provided for in these Guidelines.

2.10 Circumstances Governing Designation of Recommended Treatment

A designated Recommended Treatment need must be specifically related to (1) the resident's delinquent or criminal offense history, (2) an institutional offense for which a juvenile is found guilty through a due process hearing, or (3) a treatment need identified through an evaluation and assessment process.

2.20 Completing Recommended Treatment Program

After the projected early release date, a resident may be considered for release when all Mandatory Treatment and Recommended Treatment are completed.

2.21 Failure to Complete Recommended Treatment Program

When it becomes apparent that a resident, through no fault of his own, is not actively involved in a treatment program required by a Recommended Treatment need and the resident's failure to complete the Recommended Treatment program may result in the resident's remaining in direct care past his early release date, his case shall be reviewed as provided in approved department procedures. This case review shall consider the welfare of the resident, the resident's amenability to treatment, the availability of treatment in the community, the interests of the public and whether the resident is considered a manageable risk if released to the community and shall determine whether the resident should be released to the community on parole supervision.

If the resident is released from direct care before his projected late release date, without completing a juvenile residential facility's program addressing the Recommended Treatment need, full participation in and the completion of any community treatment program identified to address the Recommended Treatment need shall be a condition of parole supervision subject to the provisions of §16.1-291 of the Code of Virginia.

2.22 Residents Committed on a Class 1 Misdemeanor

A Misdemeanant shall not be held past 12 months due to non-completion of a Recommended Treatment need without review of his case through approved department procedures.

3.00 Institutional Offenses

3.01 Moderate Institutional Offense within 30 Days of Release

A resident shall be free of any moderate institutional offense for 30 days in order to be eligible for release, except as statutorily required or as otherwise provided in these Guidelines.

3.02 Major Institutional Offense within 90 Days of Release

A resident shall be free of any major institutional offense for 90 days in order to be eligible for release, except as statutorily required or otherwise provided in these Guidelines.

3.03 Residents Committed on a Class 1 Misdemeanor

A Misdemeanant shall not be held past 12 months due to an institutional offense without review of his case through approved department procedures.

3.10 Administrative Adjustments to Length of Stay for Serious Institutional Offenses

If a resident is found guilty, through the department's due process procedures, of a serious institutional offense, the resident's projected early and late release dates may be administratively extended a maximum of 6 months, with the exception of 12 months for an escape, as provided for in approved department procedures.

If the behavior resulting in the serious institutional offense is subject to prosecution in a court of competent jurisdiction and the court finds the resident guilty or not guilty, the resident shall not be subject to an administrative adjustment to his length of stay unless specifically provided for in a court order. Such court proceedings shall not affect or override other disciplinary actions imposed in accordance with approved department procedures.

If the behavior resulting in the serious institutional offense is not adjudicated or tried on its merits, the resident may be subject to an administrative adjustment of his length of stay as provided for in approved department procedures.

3.11 No Extension Shall Exceed Statutory Limitations

No extension of a resident's length of stay shall exceed the resident's statutory release date.

IX. AUTHORITY TO RELEASE

1.00 Eligibility for Release on Early Release Date

To be eligible for release at the projected **early release date**, a resident must (1) complete all Mandatory Treatment needs (if any), (2) complete all Recommended Treatment needs (if any), and (3) have been moderate institutional offense free for 30 days and major institutional offense free for 90 days prior to release.

2.00 Eligibility for Release on Late Release Date

To be eligible for release at the projected **late release date**, the resident must (1) complete all Mandatory Treatment needs (if any) and (2) be free of a moderate institutional offense for 30 days and a major institutional offense for 90 days prior to release.

3.00 Director's Authority to Release

The director or his designee may extend or reduce, including, but not limited to, through the implementation of an Early Release Incentive program or the review and approval of the release of any resident committed for the offenses of murder or manslaughter or for any recommitment thereafter, the time a resident remains in direct care if such change would serve the welfare of the resident, other residents, staff within a juvenile residential facility, or the public.